

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 80072(a)(8)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement to obtain the licensing agency's approval for a client to use postural supports. The phrase " if they are approved in advance by the licensing agency as specified in (A) through (F) below" is repealed and amended to read "under the following conditions."

Factual Basis:

This amendment is necessary because the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards and existing regulation provides protection for clients who use postural supports by prohibiting the use of the support as a form of restraint. This amendment eliminates the need for Department approved waivers and exceptions reducing Department staff procedures and costs; and allows diminishing Departmental resources to be applied toward the oversight of more important health and safety issues.

Section 80072(a)(8)(B)

Specific Purpose:

The phrase "All requests to use postural supports shall be in writing and include" is repealed. "a" is capitalized for a new sentence. The words "of a" is amended to read "from the client's," "such" is amended to read "the postural", and the phrase "shall be maintained in the client's record" is adopted, and the word "other" is repealed. The phrase "in order to evaluate the request" is amended to read "if needed to verify the order".

Factual Basis:

This section is amended to repeal the reference to the approval requirement for postural supports and to specify where the physician's order for the postural support must be maintained in the client's record. This amendment is necessary for the protection of the health and safety of the client. Corrections are editorial for clarity and consistency.

Section 80072(a)(8)(C)

Specific Purpose:

The word “Approved” is repealed to remove the reference to the approval requirement for postural supports. The “p” in postural is capitalized for a new sentence. The word “which” is amended to read “that” for grammatical correction.

Factual Basis:

The amendment is necessary for consistency and ease of use.

Section 80072(a)(8)(D)

Specific Purpose:

The phrase “The licensing agency shall approve the use of” is repealed and amended to read “Prior to the use of” and “that cause the client to become non-ambulatory, the licensee shall ensure that.” The words “only after the appropriate” are repealed and is amended to “a”. Finally, “Sections 80020(a) and (b)” is amended to read “Section.”

Factual Basis:

The amendments are to repeal the reference to the approval requirement for postural supports, to clearly state the existing requirement to maintain an appropriate fire clearance and for consistency and clarity.

Section 80072(a)(8)(E) (Repealed)

Specific Purpose/Factual Basis:

This section is repealed to remove the language that states the licensing agency has the authority to grant conditional and/or limited approvals to use postural supports. This repeal is necessary because the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards and existing regulation provides protection for clients who use postural supports by prohibiting the use of the support as a form of restraint. This repeal eliminates the need for Department approved waivers and exceptions, reducing Department staff procedures and costs; and allows diminishing Departmental resources to be applied toward the oversight of more important health and safety issues.

Sections 80072(a)(E)(1) and (F)

Specific Purpose:

These sections are renumbered from Sections 80072(a)(F) and (G) to Sections 80072(a)(E) and (F) for consistent numerical order since Section 80072(a)(8)(E) is repealed. In Section 80072(a)(8)(E), the phrase “allowed with prior licensing approval” is repealed. The phrase “except for clients who are currently receiving hospice care and have a hospice care plan that specifies the need for full bed rails” is adopted.

Factual Basis:

This amendment is necessary because the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards and existing regulation provides protection for clients who use postural supports by prohibiting the use of the support as a form of restraint. This amendment eliminates the need for Department approved waivers and exceptions, reducing Department staff procedures and costs; and allows diminishing Departmental resources to be applied toward the oversight of more important health and safety issues. The amendment for the requirement of bed rails that extend half the length of a client’s bed is to clarify the condition upon use. Existing regulation protects clients by prohibiting the use of bed rails as a form of restraint.

Sections 85068.4(b) and (b)(1) and (b)(2)

Specific Purpose:

These sections are adopted to include the requirements for the retention of residents over the age of 59 without Department approved waivers and exceptions.

Factual Basis:

These sections are adopted to clarify that a waiver and exception is no longer required for individuals who are over the age of 59 to reside in Adult Residential Facilities under specific conditions. A separate category, Residential Care Facilities for the Elderly, and statute, Health and Safety Code Section 1569, et seq., provide for individuals age 60 and over. The Department is limiting the number of clients over age 59 to not exceed 50% of the census in facilities with a capacity of six or fewer because the facility would approach the 75% allowance under the elderly category pursuant to Title 22, Division 6, Section 87101(r)(5), if half or more of the clients are elderly, as defined by Health and Safety Code Section 1569.2(k). Department approved waivers and exceptions have been required for facilities to retain individuals who are over the age of 59 to reside in Adult Residential Facilities. This amendment eliminates the need for Department approved waivers and exceptions, reducing Department staff procedures and costs; and allows diminishing Departmental resources to be applied toward the oversight of more important health and safety issues.

Section 85068.4(c)

Specific Purpose:

These sections are adopted to include compliance with additional requirements for the retention of clients over the age of 59.

Factual Basis:

This section is adopted to clarify that a waiver and exception is no longer required for individuals who are over the age of 59 to reside in Adult Residential Facilities under specific conditions. Department approved waivers and exceptions have been required for facilities to retain individuals who are over the age of 59 to reside in Adult Residential Facilities. This amendment eliminates the need for Department approved waivers and exceptions, reducing Department staff procedures and costs; and allows diminishing Departmental resources to be applied toward the oversight of more important health and safety issues. Additional compliance to regulations must be met to retain clients over the age of 59.

b) Identification of Documents Upon Which Department Is Relying

Not applicable.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on May 18, 2005 in Sacramento, California. Written favorable testimony was received from Jennifer Snyder of Capitol Advocacy on behalf of the California Residential Services Association (CRSA) during the 45-day comment period from April 1, 2005 to 5:00 p.m. May 18, 2005.

The comments received and the Department's responses to those comments follow. General comments follow the specifically identified section comments.

Sections 85068.4(b), (b)(1) and (b)(2)

Comment:

CRSA strongly supported the language in Sections 85068.4(b), (b)(1) and (b)(2) that clarified that an exception is no longer required for individuals who are over the age of 59 to reside in Adult Residential Facilities (ARFs) if their needs are compatible with other clients in the facility. The regulations also make it clear that a facility is only required to obtain an exception for clients if the census of the facility of persons over the age of 59 exceeds 25 percent [in a facility with a capacity of over six and 50 percent in a facility with a capacity of six or less].

Response:

Thank you for your comment. The Department considered the needs of the clients and concerns of the licensees when developing or modifying the regulations. The Department wants to clarify that the proposed regulations allow for retaining a client that turns 59 years old while residing in an Adult Residential Facility (ARF). The regulations state in part as follows:

85068.4 Acceptance and Retention Limitations

- (b) The licensee shall not admit, but may retain, persons who are over 59 years of age whose needs are compatible with other clients, if they require the same level of care and supervision as do the other clients in the facility, and the licensee is able to meet their needs.

General Comment:

CRSA also testified that "CRSA's members have expressed continued frustration in recent years as their clients have started to age and are being required to move to a licensed residential care facility for the elderly once they turn 60. Many of these clients have lived in the same house with the same caregiver for over 20 years and consider it their home. To move into another facility would be devastating for many of these developmentally disabled individuals. In most cases, remaining in their current home is the best option for these clients."

CRSA indicated that it is pleased and greatly appreciative of the Department's recognition of this problem and of the Department's support of the client's need to remain in a home that is compatible with their needs.

Response:

The Department thanks the testifier for the favorable comment.

g) 15-Day Renotice Statement

No changes have been made to the text of the regulations and, consequently a 15-day renotice was not necessary.